

REMARKS

Claims 1-12 and 14-26 were withdrawn from consideration. Applicant hereby canceled these withdrawn claims. Applicant has added new claim 27. The support for this new claim can be found on top of page 9 of the original specification. Claims 13 and 27 are now pending.

Claim 13 stands rejected under 35 U.S.C. §102(e) as unpatentable over U.S. Patent No. 5,399,574 to Robertson *et al.*

Applicants respectfully traverse the rejection to claim 13.

In order for a reference to anticipate a claim, the reference must contain every element of the claim. The invention as described in pending claim 13 contains the language “pure, non-solvated (S)-N,N-dimethyl-2-[5-(2-oxo-1,3-oxazolidine-4-yl-methyl)-1H-indole-3-yl]ethylamine.” Applicant respectfully submits that the Examiner must show through a reference that the elements “pure, nonsolvated” compound is disclosed. The Examiner has not shown a pure, non-solvated form of the compound in any reference.

The Examiner asserts that Robertson *et al.* teaches a pure non-solvated compound. Application respectfully disagrees. First, Robertson *et al.* does not use the words “pure” or “non-solvated.” The Examiner does not refer to any language in Robertson *et al.* to show that the compound is in a pure, non-solvated form.

The Examiner implies that the process steps on Column 28, lines 29-32 recited by Robertson *et al.* will achieve a “pure” and/or “non-solvated” sample. There is nothing recited in the process steps to indicate that Robertson *et al.* sought to attain a pure and non-solvated form of the compound. The Examiner refers to the NMR sample at Column 29, lines 15-18, but the Examiner shows no teaching that the NMR sample is pure. NMR samples can be analyzed with samples of varying degrees of purity.


The Examiner states initially that a compound “by default, if not explicitly named to have a solvent, is a non-solvated compound.” Applicants respectfully note that the Examiner does not refer to any reference, document, teaching or facts within her own knowledge that shows when one lists a compound, by just naming it, teaches a non-solvated form.

Accordingly, in the absence of some teaching in the prior art that the mere mention of a compound refers to a pure or non-solvated compound, applicant respectfully submits that Robertson *et al.* does not expressly refer to any pure or non-solvated compound.

In view of the above remarks and amendment, Applicant earnestly requests reconsideration and allowance of the pending claims.

Respectfully submitted,

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